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VIDEO SOFTWARE DEALERS ASSOCIATION  
and ENTERTAINMENT SOFTWARE ASSOCIATION

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIDEO SOFTWARE DEALERS  
ASSOCIATION and ENTERTAINMENT  
SOFTWARE ASSOCIATION,

Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, in his official  
capacity as Governor of the State of California;  
BILL LOCKYER, in his official capacity as  
Attorney General of the State of California;  
GEORGE KENNEDY, in his official capacity as  
Santa Clara County District Attorney, RICHARD  
DOYLE, in his official capacity as City Attorney  
for the City of San Jose, and ANN MILLER  
RAVEL, in her official capacity as County  
Counsel for the County of Santa Clara,

Defendants.

CASE NO. C 05-4188 RMW (RS)

NOTICE OF SUPPLEMENTAL  
AUTHORITY

1 Plaintiffs Video Software Dealers Association and Entertainment Software Association  
2 respectfully submit this Notice of Supplemental Authority to notify the Court of an Opinion issued by  
3 the United States Court of Appeals for the Seventh Circuit on November 27, 2006. This Opinion  
4 affirmed an order of the United States District Court for the Northern District of Illinois permanently  
5 enjoining enforcement of an Illinois state law that would have imposed criminal fines and  
6 imprisonment on persons who sold or rented to minors certain sexually explicit or "violent" video  
7 games, as defined by the statute in question. *Entertainment Software Ass'n, et al. v. Blagojevich*, \_\_\_\_  
8 F. 3d \_\_\_\_, Nos. 06-1012, 06-1048 & 06-1161 (7th Cir., Nov. 27, 2006). The defendants appealed  
9 only that part of the district court's order enjoining enforcement of the ban on sexually explicit video  
10 games. The Court held, *inter alia*, that the statute was not sufficiently narrowly tailored and thus  
11 violated the First Amendment, and that the law impermissibly compelled speech in violation of the  
12 First Amendment.

13 Specifically relevant to the motions for summary judgment pending in the instant case, the  
14 Seventh Circuit held that the statute at issue did not use the least restrictive means to achieve the  
15 statute's goal, and noted that the State "could have simply passed legislation increasing awareness  
16 among parents of the voluntary [Entertainment Software Ratings Board] ratings system." Slip Op., p.  
17 16 (citing *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 507 (1996); *Linmark Assocs., Inc. v.*  
18 *Willingboro Twp.*, 431 U.S. 85, 97 (1977)).

19 The Court also held that the statute in question unconstitutionally compelled speech because it  
20 required, *inter alia*, the placement of a large "18" sticker on the packages of games that were found to  
21 be sexually explicit under the terms of the statute. Slip Op., pp. 17-19. The Court held that this  
22 labeling requirement was subject to strict scrutiny, and that it was not narrowly tailored to achieve the  
23 statute's objectives. *Id.* at 18-19.

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1 A true and correct copy of this Opinion is attached hereto for the Court's convenience.

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3 DATED: April 2, 2007.

Respectfully submitted.

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8 By: \_\_\_\_\_/s/  
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